

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a disabled individual who suffers from multiple sclerosis (MS). Petitioner receives Social Security Disability benefits and is covered by Medicare Part D. Medicare Part D is her primary insurer for prescription costs. Petitioner also receives VPharm3, a Vermont program that covers secondary costs for certain prescriptions. As a recipient of VPharm3, petitioner's income is between 175 percent to 225 percent of the federal poverty level.

2. Petitioner was first prescribed copaxone during 1995. Copaxone is a maintenance drug for MS patients.

3. On or about May 27, 2008, petitioner attempted to have her prescription filled at her local pharmacy. Petitioner was informed that VPharm would not cover the secondary costs for the medication and told that her co-pay would be \$100.32. Petitioner was unable to pay the co-pay and was without copaxone for two weeks until other arrangements could be made through Fletcher Allen Health Care to cover one month's supply of the copaxone.

4. Petitioner was informed that VPharm³ would not cover the secondary cost because there had been a change in distributors of copaxone and the new distributor, Teva, had not signed a rebate agreement with OVHA. According to petitioner, Teva has always manufactured copaxone. Petitioner requested a fair hearing on or about June 4, 2008. A fair hearing was held on June 12, 2008. Petitioner participated by telephone as an accommodation for her disability.

5. OVHA submitted additional documentation including a March 4, 2008 Important Product Launch from Teva. Teva first received FDA approval for copaxone in 1996. However, Teva entered into an agreement with sanofi-aventis in which

sanofi-aventis was the sole distributor for copaxone until the present time. Teva assumed distribution for copaxone on April 1, 2008. Sanofi-aventis had a rebate agreement with Vermont meaning that secondary costs were covered for copaxone by the VPharm program.

6. OVHA does not have a rebate agreement with Teva meaning that the VPharm program can not cover the secondary costs for copaxone. OVHA has asked Teva to sign a rebate agreement.¹ If Teva signs a rebate agreement, the secondary cost of copaxone will be covered under VPharm3.

ORDER

OVHA's decision is affirmed.

REASONS

The Vermont Legislature enacted Act 71 which established the VPharm program. VPharm's purpose is set out in Welfare Assistance Manual (W.A.M.) § 3500 stating:

In order to keep Medicare beneficiaries' coverage whole, VPharm provides supplemental pharmaceutical coverage starting January 1, 2006.

W.A.M. § 3506 defines coverage and provides, in part:

For those individuals whose household income is greater than 175 percent but not greater than 225 percent of the poverty level, coverage in the classes above is limited

¹ OVHA has added VPharm to the VScript rebate agreement.

to drugs dispensed by participating pharmacies from manufacturers that, as a condition of participation in the program, have signed a rebate agreement with the Office of Vermont Health Access.

Unfortunately, Teva has not yet signed a rebate agreement with OVHA. Until Teva does so, petitioner's secondary costs for copaxone cannot be covered under the VPharm3 program.

The regulations set out the requirements for VPharm3 coverage. Based upon the evidence in this case, OVHA's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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